All ethical knowledge is at some point uncertain. MACINTYRE[[1]](#footnote-1) writes:

The most influential account of moral reasoning that emerged in response to this critique of emotivism was one according to which an agent can only justify a particular judgment by referring to some universal rule from which it may be logically derived, and can only justify that rule in turn by deriving it from some more general rule or principle; but on this view [S]ince every chain of reasoning must be finite, such **a process of justificatory reasoning must always terminate with the assertion of some** rule or **principle for which no further reason can be given**. ‘Thus a complete justification of a decision would consist of a complete account of its effects together with a complete account of the principles which it observed, and the effect of observing those principles. If [I] the enquirer still goes on ask ing ‘But why should I live like that?’ then there is no further answer to give him, because we have already, ex hypothesi, [we have already] said everything that could be included in the further answer.’ (Hare 1952, p. 69). The terminus of justification is thus always, on this view, a not further to be justified choice, a choice unguided by criteria. **Each individual** implicitly or explicitly **has to** **adopt his or her own first principles on the basis of such a choice**. The utterance of any universal principle is in the end an expression of the preferences of an individual will and for that will its principles have and can have only such authority as it chooses to confer upon them by adopting them.

Thus, even if there were objective truths, we would never be able to prove any of them since all of our premises can be questioned.

These individual agreements are reconciled in a community. Dr. Haste[[2]](#footnote-2):

**The 'meaning' of** something - including the meaning of our own identity and **our morality - depends on what is comprehensible and recognised within our social community.** Social beings create their identity through shared discourse and language (Shotter, 1993). […] Cultural narratives, stories and traditions feed directly into our identity, signalling valued attributes and behaviours, and giving an explanation for our past and present. […] **A moral obligation can only have meaning within a social context**. Richard Shweder describes taboos and practices found amongst rural Hindus in India which are quite morally meaningless to Americans, because they are associated with beliefs about pollution which are not shared (Shweder et al, 1987).

Communal decision-making increases the probability of the beliefs since it aggregates all knowledge, Christiano[[3]](#footnote-3):

**Epistemologically, democracy is** thought to be **the best** decision-making method on the grounds that it is generally more reliable in helping participants discover the right decisions. Since democracy **[It] brings a lot of people into the process of decision making,** [**so] it can take advantage of many sources** of information [about] and critical assessment of laws and policies. Democratic decision-making tends to be [and is] more informed than other forms about the interests of citizens and the causal mechanisms necessary to advance those interests. Furthermore, the broad based **[democratic] discussion** typical of democracy [thus] **enhances** **the** critical **assessment of the different moral ideas that guide decision-makers**. Many have endorsed democracy on the basis of the proposition that democracy has beneficial effects on character. Many have noted with Mill and Rousseau that democracy tends to make people stand up for themselves more than other forms of rule do because it makes collective decisions depend on them more than monarchy or aristocracy do. Hence, in democratic societies individuals are encouraged to be more autonomous. In addition, democracy tends to get people to think carefully and rationally more than other forms of rule because it makes a difference whether they do or not. Finally, some have argued that democracy tends to enhance the moral qualities of citizens. When [citizens] participate in making decisions, they have to listen to others, they are called upon to justify themselves to others and they are forced to think in part in terms of the interests of others. Some have argued that when people find themselves in this kind of circumstance, they come genuinely to think in terms of the common good and justice. Hence, some have argued that democratic processes tend to enhance the autonomy, rationality and morality of participants. Since these beneficial effects are thought to be worthwhile in themselves, they count in favor of democracy and against other forms of rule (Mill 1861, p. 74, Elster 2002, p. 152).Some argue in addition that the above effects on character tend to enhance the quality of legislation as well. A society of autonomous, rational, and moral decision-makers [this] is more likely to produce good legislation than a society ruled by a self-centered person or small group of persons who rule over slavish and unreflective subjects.

And laws are the only way to define our moral views, or else it becomes impossible to define which one has been accepted.

Mihilzer JUSTIFICATION AND EXCUSE: WHAT THEY WERE, WHAT THEY ARE, AND WHAT THEY OUGHT TO BE, 2004

Because justification and excuse embody transcendent and distinct moral principles and norms that define a culture through its laws, it is imperative that the positive criminal law derived from these sources should do likewise. As always, doing this would contribute to the legitimacy of the positive law and provide important moral guidance to society. But these benefits take on added, even critical importance in contemporary America, where morality is often viewed as being relative and situational, rather than transcendent and universal.584 Indeed, given the diversity and dynamism of contemporary American society and culture, there is little, if anything, that seemingly commands overwhelming popular acceptance as being an immutable moral truth. Certain **abstractions about** freedom, equality, representation and the like are widely trumpeted as being genuine American first **principles**, but even these **appear to lack objective content** and substance **when** they are **extracted from the laws and court decisions designed to define** and protect **them. Without a**n authoritative **legal imprimatur, any tangible expression of moral principle is seen as being merely one of many competing** **philosophical or political views**, which is objectively entitled to no more or less respect than the next. One person’s conception of freedom is another’s denial of equality, and so on. In the normative vacuum of contemporary American culture, **the positive law and public morality have become increasingly synonymous.** The criminal law ought to be popularly understood as expressing prudential judgments about what is to be prohibited and, to a lesser extent required, consistent with underlying truth. It is instead now popularly seen as actually constituting the underlying truth. Put another way, the law is not understood as prohibiting behavior because it is wrong; the behavior is seen as wrong because the law prohibits it.

And because law is not natural, it is forced to be a communal expression. Green, Positivism and the Inseparability of Law and Morals, 2008

 To understand the thesis, there are three terms that we need to clarify: “connection,” “morality,” and “necessary.” Connection is not a technical notion; it is simply any sort of relation. Connections matter because **we do not fully understand law until we understand how it relates to** things like social power, **social rules, and morality. There are external relations between law** and the rest of **the social world. There are also internal relations without which something would not be law**—that is, relations that belong to the concept of law. **Because law is not** a **natural** kind, **it is not plausible** to suppose **that its nature could be hidden** to us, to be revealed only in some yet-undiscovered microstructure. Because law is not a logical principle, it is not plausible to suppose that its nature is buried in some yet-unproven theorem. **Law is a human institution; we can study it only in** the ways that such institutions can be studied. One such way is to study t**he concepts through which institutions are structured and elaborated—concepts implicit in our thought, language, and practices.** To grasp the concept of law is to grasp what cannot fail to be true of law, whenever or wherever law turns up.

Thus the standard is consistency with current U.S. Law.

Current law mandates retributivism. U.S. is harsh

Tyjen Tsai and Paola Scommegna, US has world’s highest incarceration rate, 2012 **U.S. Has World's Highest Incarceration Rate**

Since 2002, the United States has had the highest incarceration rate in the world. Although prison populations are increasing in some parts of the world, the natural rate of incarceration for countries comparable to the United States tends to stay around 100 prisoners per 100,000 population. The U.S. rate is 500 prisoners per 100,000 residents, or about 1.6 million prisoners in 2010, according to the latest available data from the Bureau of Justice Statistics (BJS).

The U.S. is way more retributive than other systems.

James Q. Whitman, 2004, A Plea Against Retributivism

As we all know, the United States has embarked on a campaign of intensifying harshness in criminal punishment over the last three decades or so. Longer prison sentences and the reinstatement of the death penalty are the most important aspects of this campaign, but they are only part of it. These thirty years of harsh justice have made for an epochal shift in American law, opening a large divide between the United States and the other countries of the western world. American criminal punishment is now staggeringly harsher than punishment in such countries as Germany, France, or Japan: In criminal punishment, there is no longer any single "western" or westernized world. There is an American world, tough and unforgiving, and a Euro-Japanese world, mild in ways that have come to seem wholly impossible in the American climate.!

1. Alasdair MacIntyre, [After Virtue](http://www.amazon.com/After-Virtue-Study-Moral-Theory/dp/0268035040/), pg. 20-21 [↑](#footnote-ref-1)
2. Helen Haste, PhD, *Communitarianism and the Social Construction of Morality*, 1998 Helen Haste is Reader in Psychology at the University of Bath, England [↑](#footnote-ref-2)
3. Thomas Christiano. Stanford Encyclopedia of Philosophy.Jul 27, 2006. http://plato.stanford.edu/entries/democracy/ [↑](#footnote-ref-3)